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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

J.H., Petitioner, v. SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; CONTRA COSTA COUNTY CHILDREN AND FAMILY SERVICES BUREAU et al., Real parties in interest	A146786 (Contra Costa County Super. Ct. No. J14-01307)

INTRODUCTION

S.C. was removed from her mother, J.H. (Mother), when S.C. was about 15 months old, based on Mother's substance abuse issues. After six months of reunification services, the Contra Costa County Superior Court terminated Mother's services and set a hearing under Welfare and Institutions Code section 366.26.[1] Mother seeks extraordinary relief from these orders, contending the juvenile court erred in finding the Contra Costa Children's and Family Services (Department) provided her with reasonable reunification services, and in finding Mother had failed to make substantial progress in her court-ordered treatment plan during the period under review. We conclude substantial

[1] All further statutory references are to the Welfare and Institutions Code.

evidence supports the challenged findings, and deny on the merits Mother's petition for extraordinary writ.

BACKGROUND

On December 15, 2014, S.C. was removed from Mother's custody after she admitted to a police officer visiting her home that she smoked methamphetamine. The officer found a glass pipe of the type commonly used to smoke methamphetamine on the windowsill by the bed Mother shared with S.C. The officer also discovered a round burn in the bedding matching the shape of the glass pipe. The home contained moldy carpet, spoiled food and insects. Mother stated she had three other children who reside elsewhere. She indicated she " 'took off and left them as she was fed up with life and on the verge of a nervous breakdown.' " Mother has no contact with those children. The police officer placed S.C. in temporary custody under section 305.

The Department filed a juvenile dependency petition two days later, alleging failure to protect the child under section 300. The petition alleged Mother has a substance abuse problem that impairs her ability to provide adequate care and supervision for S.C., and that S.C.'s father has physically abused Mother and threatened to kill her.

In its report for the detention/jurisdictional hearing, the Department reported Mother's sister had contacted the Department in early December 2014, with concerns about S.C. She informed the Department Mother was homeless, addicted to drugs, and had a new boyfriend who also used drugs. S.C. had multi-cystic dysplastic kidney, and Mother had been neglecting S.C.'s medical care. This report resulted in the police visit to the home a week later.

The court ordered S.C. detained, and ordered Mother to receive alcohol and drug testing, substance abuse treatment, parenting education, and domestic violence and mental health services. The court also ordered supervised visitation between Mother and S.C.

In a March 2015 addendum report, the Department indicated S.C. had been placed in a licensed foster care home. The report provided further details about incidents of domestic violence between Mother and S.C.'s father.

In the April 2015 disposition report, the Department stated S.C. had been placed with a maternal relative. Mother had four prior child welfare referrals for neglect, domestic violence, leaving her children with a relative, drinking and using drugs. The four referrals were "assessed out." Mother had a history of arrests from 1994 through 2012, but no convictions. She had recently left Wollam House, a recovery program, because "she was being harassed by a housemate and the staff were not doing anything about it." The court found placement of S.C. with either parent would create a substantial risk to the child, and ordered reunification services and supervised visitation for Mother.

In the Department's status review report for the six-month review hearing, the Department indicated Mother was currently in her third recovery program since dependency proceedings began. She entered the Wollam House program in February 2015 and left after three weeks. Mother then entered the Rectory House inpatient program in June 2015, and left about one month later because "she did not feel she was receiving enough support from the program." In August 2015, Mother entered the Magnolia Women's Recovery program in Oakland, and is "cooperating and thriving in their environment."

Later in August, Mother reported S.C.'s maternal grandmother had molested S.C. The Department concluded the allegation was unfounded. In September, Mother alleged S.C.'s caregiver, Mother's sister, gave S.C. sleeping pills that belonged to the family dog. The social worker made an unannounced visit to the home, and found S.C. in good health, and the caregiver denied Mother's allegations. Mother also claimed her sister was giving S.C. dairy products even though she was allergic to them, but S.C.'s doctor indicated she did not have milk allergies. Instead, the doctor indicated S.C.'s feeding issues were related to being malnourished early in life.

The Department stated the services it had provided Mother included referrals to Alcoholics Anonymous, a substance abuse program, drug testing, a "parent partner," an early intervention specialist, parenting classes, individual therapy, domestic violence classes, visitation, and transportation vouchers. Mother's visitation had been "somewhat regular." She attended visitation regularly when she was residing in an inpatient

program. The Department concluded "Mother has yet to fully demonstrate . . . she has the ability to make a long-term commitment towards any area of her life, whether it be her children, her recovery from substance abuse or her unaddressed mental health needs."

Both Mother and Magnolia House requested that her case be transferred to Alameda County, where Magnolia House is located and other resources are within walking distance. The Department recommended that the case be transferred to Alameda County and Mother receive an additional six months of reunification services.

At the six-month review hearing in October 2015, the social worker recommended another six months of reunification services. She testified that "[e]ven though [Mother] . . . would leave her programs, she did stay in touch with me." She indicated, however, she was "concerned when [Mother] started making . . . allegations against [her family]." Mother had alleged her sister was giving S.C. the family dog's sleeping pills, and had claimed her own mother had sexually abused S.C. on two separate occasions. The social worker testified the casework assistant who investigated the allegations reported no "concern of the child being sexually abused" and it was "hard to determine [Mother's] motives."

The social worker reported Mother visited S.C. regularly when she was "in program," but only visited "a couple times when she was out of the program." The Department had no record of any visits by Mother with S.C. during May and June of 2015. She missed all of her scheduled drug tests in April, May, and June of 2015, and missed three of four scheduled tests in July. At the time of the hearing, Mother had been in the Magnolia House program for 84 days, and had tested negative for drugs while in that program.

Mother testified methamphetamine was her "drug of choice." She began using drugs when she was 16 years old. She entered the Wollam inpatient program in February 2015, left after a month and a half, and relapsed. Mother entered the Rectory program in June 2015, and left at the end of July. In August 2015 she entered Magnolia House, which she described as a "good program" and "different all the way around" from

the other programs. The program was six months to a year and "stricter," because "[w]e're not allowed to leave at all."

Mother indicated she believed her mother molested S.C. on December 15, 2014, the day S.C. was removed from her care. She stated her mother locked S.C. in the bathroom with her, S.C. was "freaking out," and she believed her mother sexually abused her. She twice went to a police station to report it, but was dissuaded. She finally made a police report about the alleged December 2014 incident in August 2015. Mother did not report her suspicions to the social worker until later because she did not feel "heard." She still doesn't know what happened in that bathroom, and believes it is a "possibility" that her mother sexually abused S.C. She also testified her sister, with whom S.C. had been placed, told her in March 2015 she had given S.C. the dog's sleeping pills. Mother did not report this to her social worker until six months later because she was "afraid." At the time of the hearing, Mother did not know whether or not her sister had given S.C. dog sleeping pills, although the sister told her she had not.

Mother did not contest that reasonable services were provided. The court asked her counsel at the hearing "I just want to clarify, are you contesting reasonable services?" to which Mother's attorney responded "No."

S.C.'s attorney disagreed with the recommendation of the Department, and sought termination of reunification services "[b]ecause of the age of the child . . . [and Mother's] very recent participation in programs."

The court terminated reunification services and set the matter for a section 366.26 hearing.

DISCUSSION

Reasonableness of Reunification Services

Mother asserts there is no substantial evidence that reasonable reunification services were provided to her. At the hearing at which reunification services were terminated, Mother's attorney expressly stated she was not contesting the reasonableness of the services. Accordingly, she has waived this issue on appeal. (See *In re Kevin S.* (1996) 41 Cal.App.4th 882, 885–886.)

Even had she not waived the issue, the record demonstrates Mother received extensive services, including referrals to Alcoholics Anonymous, substance abuse programs, drug testing, a "parent partner," an early intervention specialist, parenting classes, individual therapy, domestic violence classes, visitation, and transportation vouchers. Substantial evidence supports the trial court's finding that reasonable services were offered to Mother

Termination of Reunification Services

Mother claims there was no clear and convincing evidence that she "failed to participate regularly and make substantive progress in court-ordered treatment." This challenged finding was necessary for the juvenile court to terminate services at the six-month hearing and exercise its discretion to set a hearing under section 366.26. (See § 366.21, subd. (e).) Section 366.21 provides that "If the child was under three years of age on the date of the initial removal . . . and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. . . ." (§ 366.21, subd. (e)(3).)[2]

We review the juvenile court's finding to determine whether it is supported by substantial evidence. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880–881.) Thus, we review the record in the light most favorable to the juvenile court's ruling, and uphold the finding when there is substantial evidence permitting a reasonable trier of fact to make the finding under the clear and convincing standard of proof. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694–695.)

Although Mother had participated in reunification services, the evidence showed neither regular participation nor "substantive progress." (See § 366.21, subd. (e).) Mother was currently in her third recovery program since dependency proceedings began. She entered the Wollam House program in February 2015, left after three weeks, and

[2] Because the Department recommended continuation of reunification services in the juvenile court, it "takes no position with regard to Mother's . . . argument" in its letter brief.

relapsed. Mother then entered the Rectory House inpatient program in June 2015, and left about one month later because "she did not feel she was receiving enough support from the program." In August 2015, Mother entered the Magnolia Women's Recovery program in Oakland, and was still there on October 26, 2015, the date of the hearing. Mother only visited S.C. regularly when she was in a program, and did not visit at all in May or June. She missed all of her scheduled drug tests in April, May, and June of 2015, and missed three of four scheduled tests in July. Although she was reportedly doing well after 84 days at Magnolia House, it was a highly-structured, "strict" program, from which she was "not allowed to leave at all."

The juvenile court found "I have to look at the history here and when the 12-month date is. And mom has been in two programs. She was in Wollam House and left. Then she was in The Rectory and left. And in between there failed to test. Didn't visit the child. And then tested positive. . . . [¶] . . . Mom has bounced from program to program. She's not been stable. And her visits were only regular when she was primarily in program. And she hasn't moved beyond supervised [visitation] because she has failed to demonstrate substantial compliance with her case plan. [¶] So I don't see how the Court could possibly under the state of this evidence and what presented in this case in particular make a finding that there is substantial probability of return by February 15, 2016. . . . [¶] Rather, I think the evidence does support a finding that Mother has not made substantial progress in her court-ordered services or made substantial progress in addressing the issues that brought this family before the Court in the first place."

Viewing the evidence in the light most favorable to the juvenile court's ruling, we conclude substantial evidence supports the court's finding, made under the clear and convincing standard of proof, that Mother failed to participate regularly and make substantive progress in her court ordered treatment plan. (§ 366.21, subd. (e).)

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final in this court on filing. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

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Banke, J.

We concur:

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Humes, P. J.

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Margulies, J.